

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

TAKOMA PARK – SILVER SPRING
COOPERATIVE, INC.
201 Ethan Allen Avenue
Takoma Park MD 20912

Plaintiff,

vs.

Civil Action No. 485554

NEIGHBORHOOD
DEVELOPMENT COMPANY, L.L.C.
3232 Georgia Avenue, NW
Washington DC 20010

SERVE:
Adrian G. Washington
3232 Georgia Avenue, NW
Washington DC 20010

NDC TAKOMA JUNCTION, LLC
16515 Elkhorn Lane
Bowie MD 20716

SERVE:
Cynthia Eagle
16515 Elkhorn Lane
BOWIE MD 20716

CITY OF TAKOMA PARK, MARYLAND
7500 Maple Avenue
Takoma Park MD 20912

SERVE:
Kate Stewart, Mayor
City of Takoma Park, Maryland
7500 Maple Avenue
Takoma Park MD 20912

Defendants

RECEIVED

APR 27 2021

Clerk of the Circuit Court
Montgomery County, Md.

CIVIL COMPLAINT

Takoma Park – Silver Spring Cooperative, Inc. (“Plaintiff” or “Co-op”), by and through undersigned counsel, files this Civil Complaint seeking declaratory and injunctive relief and in support thereof states as follows:

PARTIES

1. The Co-op is a Maryland corporation.
2. Defendant City of Takoma Park is a municipal corporation ("City").
3. Defendant Neighborhood Development Company, L.L.C. is a limited liability corporation formed in the District of Columbia ("NDC Company").
4. NDC Takoma Junction, L.L.C. is a Maryland limited liability company ("NDC Affiliate").
5. NDC and NDC Affiliate hereinafter together "NDC."

FACTS

A. Co-op Use Of Takoma Junction Parking Lot

6. The Co-op, founded in 1981, is a community-owned grocery business with approximately 11,000 members. Since 1998, the Co-op has operated a store at 201 Ethan Allen Avenue in Takoma Park, Maryland. ("Co-op Store.")
7. The Co-op Store is located on land the Co-op leases from the Robert C. Turner Family Trust, which lease term runs through midnight on December 31, 2035.
8. Directly adjacent to the Co-op Store on the west side, the City owns 53,493 +/- square feet of land that has been used as a public parking lot since before 1998. ("Takoma Junction Parking Lot").
10. Since 1998, and through to September 1, 2018, the Co-op leased from the City only a small portion of the Takoma Junction Parking Lot, for several limited purposes including, *inter alia*, a place ("Restricted Area") to receive deliveries for Co-op Store groceries and other products; to store trash and recycle bins; and for customer parking. ("Co-op/City Lease," Exhibit 1).

11. Since 1998, and through to September 1, 2018, the City operated that portion of the Takoma Junction Parking Lot that lies outside of the Restricted Area leased to the Co-op as a public parking lot.
12. On August 1, 2016 NDC entered into an agreement with the City to allow for redevelopment of the Takoma Junction Parking Lot, *i.e.*, the “Takoma Junction Development Agreement.” (“Development Agreement,” Exhibit 2).
13. NDC’s redevelopment plans, “Takoma Junction,” are the subject of preliminary plan and site plan applications now under review by the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission (“Planning Department”), *i.e.*, Preliminary Plan No. 120190150 and Site Plan No. 820190090 (together “NDC Development”).
14. The NDC Development cannot proceed to construction until it obtains preliminary and site plan approval from the Montgomery County Planning Board (among other necessary development-related approvals).
15. Also on August 1, 2016, NDC Affiliate - by and through its “Manager” NDC - entered into a 99-year Ground Lease with the City for the Takoma Junction Parking Lot, which conveys possession of the Takoma Junction Parking Lot to NDC in furtherance of the NDC Development. (“NDC Ground Lease,” Exhibit 3).
16. By operation of a Guarantee of Lease dated July 29, 2016, NDC is the guarantor of the Ground Lease. (“Lease Guarantee,” Exhibit 3A).
17. NDC’s Ground Lease did not take effect until September 1, 2018.
18. Between August 1, 2016 and September 1, 2018, the Co-op continued to lease the Restricted Area pursuant to the Co-op/City Lease, as it had done since 1998, and the City continued to operate the remainder of the Takoma Junction Parking Lot available for public use. Exhibit 1.

19. Effective September 1, 2018 the Co-op and NDC Affiliate – by and through its Manager NDC – entered into a Parking Lot Sub-Lease for the entire Takoma Junction Parking Lot. (“Parking Lot Sub-Lease,” Exhibit 4 p. 1.)¹
20. The Parking Lot Sublease authorized the Co-op to continue to use the Restricted Area as it has done since 1998 (e.g., for Co-op Store deliveries, trash and recycle bin storage, and customer parking) “provided [the Co-op] agrees to operate the parking areas of the [Takoma Junction Property] not included in the Restricted Area as a public parking lot.”
21. The Sub-Lease contains an indemnification clause that holds harmless NDC from all claims and damages arising out of the Co-op’s use of the Takoma Junction Parking Lot and/or arising out of any act or omission of the Co-op’s agents, licensees or Invitees (e.g., delivery trucks).
22. As required by the Sub-Lease, the Co-op carries general commercial liability insurance in the amount of One Million Dollars (single occurrence) and Five Million Dollars (annual aggregate); and names NDC and the City as additional insured parties. (“Insurance Policy” Exhibit 4 § § 17.A(a), (b).)
23. As of the date of filing of this Complaint, the Co-op is current with its rental payment obligations and the premium on its Insurance Policy.
24. At 7:38 PM on April 15, 2021, NDC delivered to the Co-op by electronic mail delivery to Co-op representatives a letter that, *inter alia*, “directs [the Co-op] to immediately halt loading and unloading operations in the Takoma Junction Parking Lot. Furthermore, this letter serves as Landlord’s 30-day Notice of Termination of the Sublease . . .” (“NDC Notice to Quit,” Exhibit 5 p. 2.)

¹ The original Sub-Lease did not include page numbers. Plaintiff Co-op has added page numbers to Exhibit 4 for convenience of the Court.

25. NDC's Notice to Quit was predicated on alleged "unsafe loading and unloading practices being conducted at the Takoma Junction Parking Lot by the Tenant and its vendors, as detailed in the Site Conditions and Limitations Report, dated on or about March 10, 2021, prepared by City Manager Suzanne Ludlow." ("City Report," Exhibit 6 p. 2.)
26. The Co-op learned of the City Report after it was posted on March 10, 2021, through references on social media and by listening to a recording of the City Manager's March 10 briefing of the City Council, which referred to the City Report. The Co-op was not directly informed by the City of the City Report or the alleged concerns it raised.
27. Immediately after reviewing the City Report, Co-op General Manager Mike Houston repeatedly contacted the City, through Ms. Ludlow, by various means including email communications, telephone calls, and letters, asking her to verify with specific information the alleged unsafe practices (which in the City Report also referenced "illegal" vehicular movements), correct unfounded and inaccurate statements, and issue a formal retraction of the unfounded allegations. Representative examples of those communications are contained in Exhibit 7 ("Co-op Safety Due Diligence Letters").
28. The City took no action to correct, retract or remove the City Report prior to NDC's issuance of NDC's Notice to Quit.
29. On April 19, 2021, "at the request of City Manager Suzanne Ludlow," NDC extended the deadline for cessation of Co-op Deliveries on the Takoma Junction Parking Lot to April 26, 2021. ("NDC Extension Letter," Exhibit 8).
30. It was not until on or about April 21 that the City removed the City Report from its website and posted the following statement on its website:

The City's March 10, 2021 "Site Conditions and Limitations" Frequently Asked Questions (FAQ) document . . . is hereby retracted in full and is without effect.

See [April 23, 2021, Updated Statement Regarding NDC and Co-op.](#)²

B. NDC Development and “Reasonable Accommodations”

31. The Development Agreement between NDC and the City, *inter alia*, “require[s] [NDC] to provide reasonable accommodation to the Co-op’s operation of its business . . . which accommodation shall include access for loading of deliveries and Co-op customer parking” Exhibit 2 ¶ 4(b)(emphasis added).
32. The Development Agreement further requires [NDC], in designing its preliminary and site plans for the project, “to provide reasonable accommodation to the Co-op, provided the Co-op is operating in the Co-op Existing Premises, for access for loading of deliveries and customer parking.” Exhibit 2 ¶ 6.a.viii (emphasis added).
33. The nature and extent of what of type of physical and operational elements NDC would be required to include in the NDC Development to achieve “reasonable accommodation” to the Co-op’s business became a matter of protracted negotiations between the Co-op and NDC, and a matter of exhaustive and often heated public controversy during the course of multiple City public hearings over several years on the NDC Development.
34. In July 2018 the City adopted Resolution No. 2018-41, in which the City said it would “provide funding in an amount not to exceed \$5,000 to allow for a facilitated discussion between NDC and the TPSS Co-op, both of which have agreed to participate in the proposed mediation” (“Mediation”). (“City’s 2018 Resolution,” Exhibit 9 p. 9 lines 396 – 398).

² <https://takomaparkmd.gov/news-alert/communications-continue-with-ndc-and-tpss-co-op-regarding-deliveries>

35. The City's 2018 Resolution also confirmed that "The Development Agreement identifies the priorities of the [City], establishes the process guiding the development of the Property, . . . and reflects the Council's commitment to ensuring continuity of the TPSS Co-op operations during construction and reasonably accommodating the parking and delivery needs of the TPSS Co-op . . ." Exhibit 9 p. 2 lines 87 – 92.
36. The Co-op and NDC agreed to participate in the Mediation (Exhibit 9 p. 9 lines 398 – 399). After the initial \$5,000 in City funding was exhausted, both the Co-op and NDC paid the mediator substantial additional funds in order to complete the mediation process, which extended over multiple sessions and lasted approximately two months.
37. The Mediation resulted in an October 18, 2018 Cooperation Agreement between the NDC Affiliate – signed by NDC as its "Managing Member" -- and the Co-op. ("Cooperation Agreement," Exhibit 10).
38. The Cooperation Agreement was predicated on the following understanding:
- WHEREAS**, the parties have agreed to coordinate their activities on their respective properties prior to, during, and after the construction of the Project as set forth in this Cooperation Agreement.
- Exhibit 10 p. 1.
39. The Co-op and NDC issued the following joint statement confirming their agreement with respect to the "reasonable accommodation" terms: "The Cooperation Agreement, together with the Combined Site Plan approved by the City Council on July 25, 2018, provide a sufficient set of reasonable accommodations to the business operations of the Co-op before, during, and after the construction of the new Takoma Junction Project to justify entering into the Cooperation Agreement." Exhibit 10 p. 4 ¶ 7 (emphasis added).
40. The Cooperation Agreement identifies the physical and operational requirements that the parties agreed would satisfy the "reasonable accommodation" requirements of the Development Agreement:

- (a) The Co-op would use of the Restricted Area for deliveries pursuant to the Parking Lot Sub-Lease during the pre-construction phase (see generally Exhibit 10 p. 1 ¶ 1);
 - (b) NDC would construct a “lay-by” prior to terminating the Parking Lot Sub-Lease, to ensure that during the construction phase “[a]t all times the Co-op shall have access to the Takoma Junction Parking Lot or the lay-by, provided the Co-op is not in default of the Parking Lot Sub-Lease” (Exhibit 10 p. 2 ¶ 1); and
 - (c) After construction is complete, NDC and the Co-op each are to “make good faith efforts to coordinate and adjust delivery schedules among suppliers so that deliveries [in the lay-by] can be accommodated during the Post-Construction Period.” Exhibit 10 p. 3 ¶ 2.
41. The “lay-by” is a vehicle lane within to be built within MD 410 along the frontage of the Takoma Junction Parking Lot “constructed of concrete and . . . level with the loading area immediately between the lay-by and the sidewalk” that will serve as the location for deliveries to the NDC Development and to the Co-op. Exhibit 10 p. 2 ¶ 1.
42. In consideration for NDC’s commitments to allow continued Co-op Store deliveries in the Restricted Area before construction begins, and the subsequent construction of the lay-by, the Co-op agreed to significant limitations on its ability to participate in the public proceedings related to review of the NDC Development:
- (a) “The Co-op and its officers and board members will not oppose the [NDC Development] unless the [it] is materially changed in a manner that does not conform to the City’s Resolutions or to this Agreement (regardless of whether the change is initiated by NDC or required by a regulatory or legislative body) and such change would materially adversely impact the Co-op’s operations, in which case this clause is rendered null and void” (Exhibit 10 p. 4 ¶ 6); and

(b) “[T]he Co-op will not oppose the Takoma Junction Project or seek further accommodations from the City or NDC absent changes to the Project by NDC, the City, or any other governmental body that would materially adversely affect the Coop's operations.” Exhibit 10 pp 4 – 5 ¶¶ 7.

43. The NDC Development is now in the pre-construction phase, as the NDC Development has not yet been approved by, *inter alia*, the Montgomery County Planning Board.

44. The Co-op is in compliance with all terms of the Cooperation Agreement, including the Noninterference Agreement.

C. City's Unfounded Allegations Regarding "Safety" Concerns With Co-op Use Of The Takoma Junction Parking Lot

45. On or about March 10, 2021 the City Report posted on the City's website made the following allegations:

[T]he use of the lot for deliveries by large vehicles cannot be done safely nor can transportation design standards for deliveries be met.

* * *

Delivery trucks regularly and illegally cross the double yellow line to enter and exit the City-owned parking lot. The largest 18-wheeler delivery trucks have been observed backing out onto MD-410 after making deliveries, causing traffic backups in both directions and endangering pedestrians, bicyclists and motorists. These practices endanger pedestrians, transit-users, bike riders and motorists.

(“City Report,” Exhibit 6).

46. Despite repeated requests from the Co-op asking that the City substantiate its allegation that delivery vehicles have been observed backing out onto MD 410, the City has not provided a single confirmed example.

47. The City's allegation that left hand turns across a double yellow line are "illegal" is unfounded, as confirmed on Page 17 of the Maryland Driver's Manual (excerpted in Figure 1):

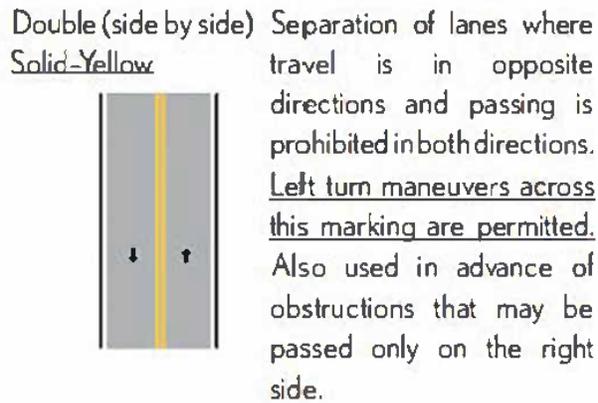


Figure 1 (emphasis added.)

48. Informal City communications expressing concern about the potential for right-hand turning movements to cross into an oncoming lane when turning right are also unfounded, as Maryland's 2017 Maryland Commercial Driver's License Manual expressly allows this turning movement subject to the following rules:

- If you are driving a truck or bus that cannot make the right turn without swinging into another lane, turn wide as you complete the turn. Keep the rear of your vehicle close to the curb. This will stop other drivers from passing you on the right.
- Don't turn wide to the left as you start the turn. A following driver may think you are turning left and try to pass you on the right. You may crash into the other vehicle as you complete your turn.
- If you must cross into the oncoming lane to make a turn, watch out for vehicles coming toward you. Give them room to go by or to stop. However, don't back up for them, because you might hit someone behind you.

49. Moreover, the City and NDC had actual notice as to the details of Co-op delivery operations since October, 2018.

50. As part of the Cooperation Agreement, the Co-op was required to provide NDC a summary of all deliveries to the Co-op for the two-week period between September 17, 2018 to September 30, 2018, including: “(i) a code for the name of each supplier; (ii) the type and length of truck used by each supplier; (iii) the category of items being delivered by each supplier (e.g. refrigerated goods, frozen goods, vegetables, etc.); (iv) the frequency, day, and time each supplier is expected to make a delivery or deliveries; and (v) the estimated length of time of each delivery (“Delivery Data”).” Exhibit 10 p. 2 ¶¶ 4.
51. The Co-op provided this Delivery Data to NDC and to the City in October of 2018 and concurrently posted it on the Co-op’s website.
52. Accordingly, NDC and the City both have been privy to the exhaustive Delivery Data since September of 2018 and did not see any basis to raise safety concerns as a result of this information.
53. The Co-op is unaware of a single delivery-related accident in the Takoma Junction Park Lot since 1998.
54. NDC’s Notice To Quit was predicated on the City’s legally and factually unfounded allegations of “unsafe loading and unloading practices being conducted at the Takoma Junction Parking Lot by the Tenant and its vendors, as detailed in the Site Conditions and Limitations Report, dated on or about March 10, 2021, prepared by City Manager Suzanne Ludlow” (“City Report”). Exhibit 6 p. 2.
55. Before posting the City Report on the City’s website, the City did not (a) advise the Co-op that it had safety concerns regarding Co-op deliveries in the Takoma Junction Parking Lot, (b) share the content of the City Report with the Co-op, or (c) inform the Co-op that the City Report had been posted.
56. The Co-op only learned of the City Report through social media, and immediately and repeatedly requested that the City substantiate its claims. Exhibit 7.

57. Despite these repeated Co-op requests, the City did not rescind its allegations until after NDC issued the NDC Notice to Quit.

**COUNT 1 – BREACH OF CONTRACT:
Cooperation Agreement (Defendant NDC)**

58. The Co-op incorporates ¶¶ 1 - 57, inclusive, by reference as if restated fully herein.

59. NDC's Notice to Quit, demanding that all deliveries cease by April 26, 2021 and terminating the Parking Lot-Sublease effective May 15, 2021 constitutes a material breach of the Cooperation Agreement by terminating Co-op use of the Takoma Junction Parking Lot before the lay-by is built.

60. NDC's Notice to Quit is predicated on the City's now-rescinded Site Conditions and Limitations Report.

61. The Co-op has used the Restricted Area of the Takoma Junction Parking Lot since 1998 without a delivery-related accident, both as a tenant of the City, and since September 1, 2018 as a tenant of NDC.

62. The NDC Notice to Quit has no legal or factual justification.

63. The Co-op receives multiple daily deliveries of produce, meat, dairy, beverage and household goods and NDC's Notice to Quit, if not enjoined, will cause irreparable harm to the Co-op, *i.e.*, between three and five days of no deliveries would be sufficient to deplete the store of most goods, cause a severe drop in daily sales revenue, and the store would soon close if it had no products to sell.

64. NDC will suffer no harm if the status quo is maintained: (a) the Co-op is – and will remain – current in its Sub-Lease rental payments; (b) the Indemnification Clause of the Sub-Lease will remain in effect; and (c) NDC will remain an additional insured on the Co-op's insurance policy.

65. The public interest in protecting the Co-op's continued use of the Takoma Junction Parking Lot is overwhelming: (a) the Co-op is the only food store in the City's downtown business

district, where it serves local food needs and provides a convenience to local residents; and (b) the Co-op facilitates the distribution of free food in conjunction with non-profit organizations to individuals and families in need, providing a valuable public service, and losing access to the Takoma Junction Parking Lot threatens the Co-op's ability to continue to participate in those efforts.

WHEREFORE, Plaintiff Co-op asks that this Court grant the following relief:

- A. Grant judgment in favor of the Co-op and against NDC and enter an order finding that NDC is in breach of the Cooperation Agreement;
- B. Grant a temporary restraining order precluding NDC from enforcing the NDC Notice to Quit;
- C. Grant a preliminary injunction precluding NDC from enforcing the NDC Notice to Quit;
- D. Grant a permanent injunction authorizing the Co-op to use the Takoma Junction Parking Lot until such time, if ever, as the lay-by may be constructed;
- E. Grant specific performance in the form of an Order mandating that NDC adhere to the terms of the Cooperation Agreement; and
- F. For such other and further relief as this Court deems just and proper.

COUNT 2 – BREACH OF CONTRACT:
Development Agreement (Defendant NDC and Defendant City)

- 66. The Co-op incorporates ¶¶ 1 - 65, inclusive, by reference as if restated fully herein.
- 67. The Development Agreement *inter alia*: (1) “require[s] [NDC] to provide reasonable accommodation to the Co-op’s operation of its business . . . which accommodation shall include access for loading of deliveries and Co-op customer parking” (Exhibit 2 ¶ 4(b)(emphasis added); and (2) requires [NDC], in designing its preliminary and site plans

for the project, “to provide reasonable accommodation to the Co-op, provided the Co-op is operating in the Co-op Existing Premises, for access for loading of deliveries and customer parking.” Exhibit 2 ¶¶ 6.a.viii (emphasis added).

68. The City, in urging NDC and the Co-op to enter into mediation to address the “reasonable accommodation” issue, confirmed in the City’s 2018 Resolution “the Council’s commitment to ensuring continuity of the TPSS Co-op operations during construction and reasonably accommodating the parking and delivery needs of the TPSS Co-op . . .” Exhibit 9 p. 2 lines 87 – 92.
69. The terms of the Development Agreement, on their face and also when read in conjunction with the City’s 2018 Resolution, confirm the intention of the parties to ensure that the NDC Development would incorporate “reasonable accommodations” to ensure the viability of the Co-op Store.
70. The terms of the Development Agreement, on their face and also when read in conjunction with the City’s 2018 Resolution, confirm that the Co-op was the intended primary beneficiary of the “reasonable accommodation” requirements of the Development Agreement.
71. The Co-op is a primary beneficiary of the Development Agreement, and as such it is a third-party beneficiary of the contract.
72. In terminating the Sub-Lease, NDC is in breach of its obligation under ¶¶ 4(b) and ¶¶ 6.a.viii of the Development Agreement to provide reasonable accommodations to the Co-op for deliveries and customer parking.
73. In failing to ensure that NDC adheres to its obligations under the Development Agreement, the City likewise is in breach of its commitment to ensure reasonable accommodations for the Co-op.
74. As a third-party beneficiary of the Development Agreement, the Co-op has standing to enforce its terms.

WHEREFORE, Plaintiff Co-op asks that this Court grant the following relief:

- A. Grant judgment in favor of the Co-op and against NDC and the City and issue a declaration stating that the Co-op is a third party beneficiary of the Development Agreement;
- B. Grant judgment in favor of the Co-op and against NDC and the City and enter an order finding that NDC and the City are in breach of the Development Agreement;
- C. Grant a temporary restraining order precluding NDC from enforcing the NDC Notice to Quit, as it constitutes a breach of the reasonable accommodation requirements of the Development Agreement;
- D. Grant a preliminary injunction precluding NDC from enforcing the NDC Notice to Quit, as it constitutes a breach of the reasonable accommodation requirements of the Development Agreement;
- E. Grant a permanent injunction authorizing the Co-op to use the Takoma Junction Parking Lot until such time, if ever, as the lay-by may be constructed;
- F. Grant specific performance in the form of an Order mandating that the Co-op has authority to use the Takoma Junction Parking Lot in the manner allowed under the Takoma Parking Lot Sub-Lease until such time, if ever, as the lay-by may be constructed;
- G. Grant specific performance in the form of an Order mandating that NDC adhere to the terms of the Cooperation Agreement; and
- H. Grant such other and further relief as this Court deems just and proper.

COUNT 3 - BREACH OF CONTRACT
Takoma Parking Lot Sublease: Defendant NDC

75. The Co-op incorporates ¶¶ 1 - 74, inclusive, by reference as if restated fully herein.
76. The Parking Lot Sublease, executed on September 1, 2018, was negotiated during the course of the Mediation Process, which spanned August 2018 through its culmination with the signature of the Cooperation Agreement on October 10, 2018.
77. The City's 2018 Resolution gave preliminary approval to a "Draft April 18, 2018 Site Plan" ("2018 Draft Plan") presenting an overview of the proposed NDC Development, subject to further review by the City Council specifically to determine whether the Draft Plan provided the "reasonable accommodation" requirement of the Development Agreement, *i.e.*, the "Council will schedule a Work Session in September 2018 to determine if Site Plan changes are necessary to satisfy the reasonable accommodation requirements set forth in the Development Agreement and if so will direct NDC to make those changes to any Site Plan then pending before the Montgomery County Planning Department." Exhibit 9 p. 10 lines 428 - 432.
78. The Parking Lot Sub-Lease formed the predicate for the pre-construction statement in the Cooperation Agreement that "NDC and the Co-op have entered into a sub-lease (the 'Parking Lot Sub-lease') with respect to the Takoma Junction Parking Lot to allow the co-op to continue its current use of the Parking Lot until the commencement of the construction of the Project." Exhibit 10 p. 1 ¶ 1.
79. Based on the agreement by NDC and the Co-op to the set of "reasonable accommodations" set forth in the combined Parking Lot Sub-Lease and Cooperation Agreement, the City did not hold the anticipated September 2018 Work Session to determine if Site Plan changes were necessary to satisfy the reasonable accommodation requirements set forth in the Development Agreement, because the need to make this

determination was rendered moot by operation of the Parking Lot Sub-lease and the Cooperation Agreement.

80. NDC's Notice to Quit constitutes a breach of the Sub-Lease as the Co-op is not in default of any of its terms and there is no legal or factual basis for the Notice.

WHEREFORE, Plaintiff Co-op asks that this Court grant the following relief:

- A. Grant judgment in favor of the Co-op and against NDC and enter an order finding that NDC is in breach of the Parking Lot Sub-Lease;
- B. Grant a temporary restraining order precluding NDC from enforcing the NDC Notice to Quit;
- C. Grant a preliminary injunction precluding NDC from enforcing the NDC Notice to Quit;
- D. Grant a permanent injunction authorizing the Co-op to use the Takoma Junction Parking Lot until such time, if ever, as the lay-by may be constructed;
- E. Grant specific performance in the form of an Order mandating that NDC adhere to the terms of the Parking Lot Sub-Lease;
- F. Award to Co-op reasonable attorneys' fees; and
- G. For such other and further relief as this Court deems just and proper.

COUNT 4 – BREACH OF COVENANT OF QUIET ENJOYMENT
Takoma Parking Lot Sublease (Defendant NDC)

81. The Co-op incorporates ¶¶ 1 - 80, inclusive, by reference as if restated fully herein.
82. Paragraph 27 of the Parking Lot Sub-Lease includes the following "Covenant of Quiet Enjoyment:

[NDC] covenant that it has the right to make this Sub-Lease and that, if [Co-op] shall pay all Rent and perform all of [Co-op's] other obligations under this Sub-Lease, [Co-op] shall have the right, during the Term and subject to the provisions of this Sub-Lease, to quietly occupy and enjoy the

Premises without hindrance by Tenant or its successors and assigns. No breach of covenant of quiet enjoyment shall be actionable, unless, as a threshold matter, it meets the standards for injury as set forth in *Hyde v. Brandler*, D. C. Mun.App., 118 A.2d 398 (1955) (hereinafter “*Hyde*”).

Exhibit 4 ¶¶ 27 (emphasis added).

83. Co-op is current with its rent and has performed all of its other obligations under the Sub-Lease.
84. NDC’s demand in its Notice to Quit that the Co-op “immediately” cease deliveries on the Takoma Junction Parking Lot (which deadline was subsequently extended to April 26, 2021) is an unjustified partial eviction of the Co-op under the standards of *Hyde*, and impermissibly interferes with the Co-ops right to full possession of the Takoma Junction Parking Lot.
85. NDC’s demand in its Notice to Quit terminating the Parking Lot Sub-Lease effective May 15, 2021 is an unjustified full eviction of the Co-op under the standards of *Hyde v. Brandler*, D.C.Mun.App, 118 A.2d 398 (1955), and impermissibly interferes with the Co-op’s right to full possession of the Takoma Junction Parking Lot.

WHEREFORE, Plaintiff Co-op asks that this Court grant the following relief:

- A. Grant judgment in favor of the Co-op and against NDC and enter an order finding that NDC is in breach of the Parking Lot Sub-Lease;
- B. Grant a temporary restraining order precluding NDC from enforcing the NDC Notice to Quit;
- C. Grant a preliminary injunction precluding NDC from enforcing the NDC Notice to Quit;
- D. Grant a permanent injunction authorizing the Co-op to use the Takoma Junction Parking Lot until such time, if ever, as the lay-by may be constructed;

- E. Grant specific performance in the form of an Order mandating that NDC adhere to the terms of the Parking Lot Sub-Lease;
- F. Award to Co-op reasonable attorneys' fees; and
- G. For such other and further relief as this Court deems just and proper.

**COUNT V - INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS
Cooperation Agreement and Takoma Junction Parking Lot Sub-Lease (Defendant
City)**

- 86. The Co-op incorporates ¶¶ 1 - 85, inclusive, by reference as if restated fully herein.
- 87. The City is not a party to the Takoma Parking Lot Sub-Lease.
- 88. The City is not a party to the Cooperation Agreement.
- 89. The Co-op and NDC are parties to both the Takoma Parking Lot Sub-Lease and the Cooperation Agreement, and the Co-op has legally cognizable contractual rights to both agreements.
- 90. The City is aware of the Takoma Parking Lot Sub-Lease, as the City holds the underlying Ground Lease between the City and NDC, and has authorized NDC's sublease to the Co-op.
- 91. The City further is aware of the Takoma Parking Lot Sub-Lease: The Cooperation Agreement confirms that "The City will provide snow removal services [on the Takoma Junction Parking Lot] for so long as the Co-op makes the Parking Lot available to the public for free parking." Exhibit 10 p. 1 ¶ 1.
- 92. The City's publication of the City Report was published in order to induce NDC to terminate the Takoma Parking Lot Sub-Lease and/or, in the alternative, to induce NDC to demand that the Co-op cease deliveries on the Takoma Junction Parking Lot.
- 93. Termination of the Takoma Parking Lot Sub-Lease and/or cessation of deliveries would make it impossible for the Co-op to carry out its business operations.

94. The City's allegations that delivery truck movements when entering, leaving, and within the Takoma Junction Parking Lot are "illegal" and unsafe are utterly without justification in fact and in law.
95. NDC's subsequent breach of the Cooperation Agreement, the Development Agreement and the Sub-Lease all are a direct result of the City's posting of the City Report on its website and refusal to correct or remove it after the Co-op repeatedly brought the errors in the City Report to the attention of the City.
96. The Co-op will suffer immediate and irreparable damage to its business as a result of NDC's breach of the three agreements identified in Paragraph 95.

WHEREFORE, Plaintiff Co-op asks that this Court grant the following relief:

- A. Grant judgment in favor of the Co-op and against the City and enter an order finding that the City has intentionally interfered with the Co-ops contractual relations with NDC with respect to (a) the Cooperation Agreement; (b) the Takoma Junction Parking Lot Sub-Lease; and (c) as to the Co-op's interest in the Development Agreement as a third party beneficiary;
- B. Grant a temporary restraining order prohibiting the City from repeating verbally or in writing, and prohibiting the City from posting on any website or social media site, any statement that the Co-op deliveries are carried out in an illegal or unsafe manner;
- C. Grant a preliminary injunction prohibiting the City from repeating verbally or in writing, and prohibiting the City from posting on any website or social media site, any statement that the Co-op deliveries are carried out in an illegal or unsafe manner;
- D. Grant a permanent injunction prohibiting the City from repeating verbally or in writing, and prohibiting the City from posting on any website or social media

site, any statement that the Co-op deliveries are carried out in an illegal or unsafe manner; and

G. For such other and further relief as this Court deems just and proper.

COUNT VI - INTENTIONAL INTERFERENCE WITH BUSINESS
RELATIONSHIPS
Cooperation Agreement and Takoma Junction Parking Lot Sub-Lease
(Defendant City)

97. The Co-op incorporates ¶¶ 1 - 96, inclusive, by reference as if restated fully herein.

98. At the time the City posted the City Report on the City website it knew or should have known that the safety allegations contained therein were untrue and unsubstantiated.

99. At the time the City posted the City Report on the City website it knew that the Co-op was in multiple contractual relationships with NDC, *i.e.*, the Cooperation Agreement, the Takoma Junction Sub-Lease, and a third party beneficiary of the Development Agreement.

100. At the time the City posted the City Report on the City website it knew or should have known that NDC -- as Landlord to the Takoma Junction Sub-Lease - could reasonably be expected to take actions adverse to the Co-op's interest with respect to any of these contracts.

101. Upon learning of the City Report, the Co-op repeatedly (a) requested that the City retract the untrue statements; and (b) provided to the City legal and factual authority confirming that the City Report contained multiple untrue statements.

102. The City's refusal to retract and/or correct the City Report for more than a month after it was published on the City website constituted an intentional and willful act.

103. The City's refusal to retract and/or correct the City Report for more than a month after it was published on the City website was calculated to cause damage and loss to the Co-op in its lawful business, as the Co-op cannot remain in business even after several days without the delivery of products to the Co-op Store.

104. The City's posting of the City Report and subsequent refusal to retract and/or correct the City Report was done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the City.

105. NDC's imminent threat of termination of the Takoma Junction Parking Lot Sub-Lease, and demand that deliveries cease on April 26, 2021, if carried out will result in actual financial damage, loss of goodwill with its members and customers, and interfere with the Co-op's business relationships with the vendors who deliver products to the Co-op Store.

WHEREFORE, Plaintiff Co-op asks that this Court grant the following relief:

- A. Grant judgment in favor of the Co-op and against the City and enter an order finding that the City has intentionally interfered with the Co-op's business relations with NDC with respect to (a) the Cooperation Agreement; (b) the Takoma Junction Parking Lot Sub-Lease; and (c) as to the Co-op's interest in the Development Agreement as a third-party beneficiary;
- B. Grant judgment in favor of the Co-op and against the City and enter an order finding that the City has intentionally interfered with the Co-op's business relations with its members, customers and vendors in that cessation of deliveries will materially impair the Co-op's business relations with each of these groups;
- B. Grant a temporary restraining order prohibiting the City from repeating verbally or in writing, and prohibiting the City from posting on any website or social media site, any unfounded statement that the Co-op deliveries are carried out in an illegal or unsafe manner;
- C. Grant a preliminary injunction prohibiting the City from repeating verbally or in writing, and prohibiting the City from posting on any website or social media

- site, any unfounded statement that the Co-op deliveries are carried out in an illegal or unsafe manner;
- D. Grant a permanent injunction prohibiting the City from repeating verbally or in writing, and prohibiting the City from posting on any website or social media site, any unfounded statement that the Co-op deliveries are carried out in an illegal or unsafe manner; and
- G. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Michele McDaniel Rosenfeld

Michele McDaniel Rosenfeld
CPF# 8712010533
The Law Office of Michele Rosenfeld LLC
1 Research Court, Suite 450
Rockville MD 20850
301-204-0913
rosenfeldlaw@mail.com

Attorney for Plaintiff

- Exhibit 1: Co-op/City Lease
Exhibit 2: Development Agreement
Exhibit 3: NDC Ground Lease
Exhibit 3A: Lease Guarantee
Exhibit 4: Parking Lot Sub-Lease
Exhibit 5: NDC's Notice to Quit
Exhibit 6: City Report
Exhibit 7: Co-op Due Diligence
Exhibit 8: NDC Extension Letter
Exhibit 9: City's 2018 Resolution
Exhibit 10: Cooperation Agreement